Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No._____

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1995

GERARD HENNESSEY, Pro Se,
and
LINDA ANN VEGA, Pro Se,
Petitioners,

versus

L. J. Blalack, Melissa Martin,
Robert Flowers, Lubbock County,
Rosemary Chivers, Don McBeath,
John Neal, Doug Greathouse,
Julie Martin, Patsy Summers, J. David Nelson et al,
Respondents.

On petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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4100

QUESTIONS PRESENTED

1. Whether remedy exists for Petitioners who were deprived of liberty without due process of law by a justice of the peace without cause when they were in his court on non-judicial matters?

2. Whether remedy exists for Petitioners who were injured as a result of a longstanding custom and policy by state actors to facilitate and protect a justice of the peace who imposed and collected excessive fines and fees, and denied citizens access to court records, by threat of and actual arrest?

3. Whether remedy exists for Petitioners whose civil rights were violated by a corrupt enterprise whose participants, all state actors, conspired to facilitate and protect a justice of the peace whose longstanding and widely-known practice of extortion, obstruction of justice, official misconduct, official oppression, and abuse of office in order to benefit financially from unlawful revenue he extorted?

4. Whether absolute quasi-judicial and qualified immunity may be granted to clerks in the office of a justice of the peace who admitted under oath they had committed perjury with the stated intent of obstruction of official investigations of violation of Petitioners' rights, and to justify a baseless after-the-fact adjudication of direct contempt against Petitioner Hennessey?

5. Whether a motion for certification as a class action for more than 500 injured persons, may be denied without a hearing and without discovery? and whether a "headless class action" should be established for them?

6. Whether "suborning of perjury with intent to obstruct an official investigation and falsely adjudicate guilt", when done by a justice of the peace, becomes harmless "coaching" of witnesses?

7. Whether prosecutorial immunity may be granted to a prosecutor who fails and refuses to investigate evidence of widespread civil rights abuses freely available and widely known in the community, thereby facilitating and protecting the alleged corrupt conspiracy?

LIST OF PARTIES

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Ralph Brock
Louis Carillo
Randall Carpenter
R M Chivers
James Cummings
Linda deLeon
Lyn Duval
Colene Fielding
Sheila Fireman
Robert Flowers
James Gorsuch
Jim Hansen
Gerard Hennessey
Diana Holloman
Dale Jones
Stanley Kaster
Lubbock Independent School District
Lubbock County
Julie Martin
Melissa Martin
Mike Moses
Don McBeath
Terry McEachern
Jim Mull
Carlos Leal, Jr.
J. David Nelson
Sam Ogan
John Owen
Sunny Ratliff
Randall Sherrod
Patsy Summers
George Thompson
Linda Ann Vega
R. B. Adamson

MEMBERS OF THE PROPOSED CLASS:
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Elida Adams
Jimmy Adams
Maude Adams
Minerva Adams
R. B. Adamson
Barbara Aguilar
Marie Aguilar
Diane Alcorte
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Raymond Deleon
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Randall Douglas
Charles Dunn
Vins Earnest
C Edminister
John Edminister
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Freddy Elias
Russel Elliot
Joe Enaina
Dominga Enrique
Lupe Enriquez
D Ermique
Elizondo Ernest
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Francis Garcia
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Juanita Garcia
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Tom Watson
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Archie White
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Phyllis White
Sheila White
Ruby Whitfield
Bobby Williams
W William
Melanie Willis
Ronald Willis
Virgie Willis
Margaret Wilson
Tausha Winnebur
Angeliah Wood
Heidi Wood
Abe Woods
Mike Ybarra

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A: Opinions of the Court of Appeals

B: Orders of Trial Court

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I. OPINIONS BELOW

This is a Petition for Writ of Certiorari on denial by the Fifth Circuit Court of Appeals of consolidated appeals Nos.93-1808,-1809, -1835, -9009, -9010,09011,-9012,-9013,-9015,-9092,-9123, 94-10034,-10035,-10370 from the United States District Court for the Northern District of Texas Nos. 5:93-CV-78-C, 5:93-CV-221-C,-226-C,-240-C,-305-C,and -330-C, in an unpublished opinion dated August 30, 1994; Petitioners' Motion for Rehearing was denied on September 27, 1994. The Appeal Court's automatic Stay of Mandate granted by Local Rule 41, was extended on November 22, 1994, on condition that Petitioners file their Writ of Certiorari with the Supreme Court by December 16, 1994.

The District Court severed the following complaints from the original complaint, styled 5:93-CV-221-C, -226-C, -240-C, -305-C, and -330-C and dismissed [Doc93:Pp770-2; Doc94:P773; Doc95:Pp774-6; Doc96:Pp777-8; Doc201; Doc212] against the following defendants and these dismissals were appealed to the Fifth Circuit:

Appeals still before the Fifth Circuit: dismissal of complaint against L. J. Blalack [Doc224-5]; dismissal of complaint against J. David Nelson [Doc258-9]; denial of Motion for Reconsideration of Dismissal of RICO Claim [Doc217].

Members of Blalack' staff who knowingly made and/or notarized false statements: Melissa Martin, Julie Martin (also Melissa Martin's sister), Rose Marie Chivers, Patsy Summers;

Officials responsible for investigating citizens' complaints: Special Prosecutor John Neal, Investigator Doug Greathouse, and Texas Judicial Conduct Commission Chief Executive Officer Robert Flowers;

Officials and entities charged with administration of justice who received extorted funds: County Judge Don McBeath and Lubbock County, dismissal in part.

Other orders and judgments which Petitioners appealed:

Refusal to disqualify the presiding judge whose brother served from May 1992 until February 1994 on the Board of Trustees of Lubbock Independent School District, a state agency that knowingly and intentionally brought poor, unrepresented, uneducated citizens into the court of a Justice of the Peace L. J. Blalack, who was widely known to engage in severe and outrageous violation of civil rights on a regular basis.

Unfair protection of defendants against discovery, premature dismissal of complaints against co-conspirators before discovery, and denial of motion for joinder. Petitioners argued that the District Court's denial of plaintiff's discovery requests and granting of defendants' requests for protection against discovery as well as allowing defendants' discovery extensions and mooting discovery by means of premature dismissal of complaints, denial of motion for hearing on discovery [Doc124:P955], denial of joinder of other parties similarly injured by the corrupt conspiracy [Doc77:Pp517-525;Doc78:Pp526-536; Doc79: P537], have irretrievably impaired the rights of more than 500 Lubbock citizens injured by the corrupt conspiracy.

Granting of judicial immunity to Defendant Melissa Martin for damages caused by her unlawful non-judicial acts [Doc201: P19]--she also admitted to conspiracy to obstruct an official State of Texas investigation--and extortion, both racketeering activities. Petitioners filed their Notice of Appeal on December 6, 1993 [Doc204]. In their opinion of August 30, 1994, denying Petitioners' consolidated appeal, the Fifth Circuit Court of Appeals affirmed the District Court's grant of immunity, for which Petitioners seek the Supreme Court's Writ of Certiorari. the District Court's denial of Linda Ann Vega's Motion for Joinder also dismissed Vega's complaint against Melissa Martin for ordering her arrest for inability to pay the excessive fine imposed by L. J. Blalack on January 3, 1990.

Denial of class action certification. When Petitioners received the Welborn report, which was based on examination of Blalack's court records, they found themselves in the position of representatives of a possible class of 500. Petitioner Hennessey's motion for certification of the action as a class action [Doc50:Pp353-360] was denied on August 12 by the District Court

[Doc73:P512]. On August 13 Linda Ann Vega filed her Motion for Joinder [Doc77:P517] which the District Court denied on August 16 [Doc78: P526]. Petitioners filed their brief appealing this denial in their consolidated brief on January 12, 1994, denial of which is the subject of this Petition to the Supreme Court. In their subsequent Motion, Petitioners requested the District Court, in the event it did not approve them as representatives of the class, to certify a headless class and appoint an attorney and representative from among the list of members of the proposed class [Doc83:P616]. On September 13 the District Court also denied this request [Doc114:P883], as did the Fifth Circuit Court of Appeals. In order to avoid jeopardizing the interests of this large group of citizens, particularly as Petitioners were acting Pro se, Attorney Val Varley agreed to represent them all if a 60-day continuance on the deadline for filing pleadings and amended complaint could be obtained. Petitioners' request for continuance was denied by the District Court [Doc174], leaving members of the proposed class unrepresented. The District Court refused to grant this extension although Defendants had been given liberal extensions of time in order to avoid discovery; subsequently the District Court denied this certification request on grounds that Petitioner Hennessey was not a class representative [Doc114], which was appealed to the Fifth Circuit and denied in the consolidated opinion and is now the subject of this Petition.

Dismissal of RICO claims. Petitioners' RICO claims were dismissed by the District Court on August 25, 26, 30, and September 24, 1993 [Docs93,95,96,140,212,224]; Petitioners' appeal brief was filed with the Fifth Circuit Court of Appeals on January 18 , 1994. and the appeal was denied on August 30, 1994. Petitioners' Motion for Reconsideration in light of NOW v Scheidler 114 S.Ct. 798 (1994), filed on February 1, 1994 [Doc216], was denied by the District Court on February 2, 1994 [Doc217]; Petitioners filed their appeal brief to the Fifth Circuit Court of Appeals on July 26, 1994, which is still before the Appeals Court.

II. JURISDICTION OF THE SUPREME COURT

Jurisdiction of the Supreme Court is indicated by Rule 10.1 of the Rules of the Supreme Court, as follows:

(a) The Judgment of the Fifth Circuit Court of Appeals is in conflict with decisions of other United States Courts of appeals, and with state courts of last resort in that it affirmed the District Court judgments and orders that:

- dismissed a motion for class action certification without discovery or a hearing, ignoring unchallenged evidence that over 500 citizens had been injured in truancy hearings;

- dismissed RICO claims without discovery or a hearing, despite evidence that county staff and officials received funds extorted from citizens;

- granted absolute quasi-judicial and qualified immunity to court staff who gave perjured statements to official investigators in order to justify Justice of the Peace's arrest of Petitioner Hennessey on grounds of direct contempt;

- refused to allow joinder of Petitioner Vegas whose rights were similarly violated;

- refused to disqualify presiding judge whose brother served on the board of trustees of the school district that had brought the truancy complaints.

(c) Also deciding important questions of federal law which have not been, but should be, settled by the Supreme Court and other questions in a way that conflict with decisions of the Supreme Court, the judgment:

- dismissed RICO claim on grounds of lack of economic injury;

- dismissed the complaint of suborning of perjury -- holding that this was harmless "coaching" of witnesses, an entirely new legal concept at odds with the entire body of legal opinion, as well as Federal and state statuute

held that a special investigator and his assistant were immune from liability for refusal to investigate on grounds of prosecutorial immunity.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioners' claims are based on the following, the texts of which are reproduced in the Appendix:

A. Constitutional provisions

1. Amendments to the United States Constitution: Articles IV, V, VI, VIII, XIV(1)

2. Constitution of the State of Texas (extracts in Appendix)

B. Statutory Provisions

1. Federal laws and regulations

Racketeer Influenced and Corrupt Organizations Act 18 U.S.C. § 1981-5
Fair Debt Collection Practices Act 15 U.S.C. §1692
Judiciary and Judicial Procedure 28 U.S.C. §144,455(b)(5),1291-4
Federal Rules of Civil Procedure Rules 8, 18, 23, 26, 33,36,37,41,56,57,62
Hobbs Act U.S.C.A. Title 18 §1951
28 U.S.C. §1291
U.S.C.A. 18 §241

2. State laws

Texas Education Code §4.25: Violation of Compulsory Attendance
Texas Government Code Title 61 Article 3908
Texas Penal Code Title 8 Chapter 37
Texas Penal Code Title 18 Article 1510

IV. STATEMENT OF THE CASE

This Petition respectfully requests the Supreme Court to issue a writ of certiorari in order to review decisions of the Lubbock Court of the Northern District of Texas, affirmed by the Fifth Circuit Court of Appeals, in hearing Petitioners' complaint 5:93-CV-78 [Doc1:Pp1-101] filed April 7, 1993 against former Lubbock County Justice of the Peace L. J. Blalack and other state actors who collaborated with, protected and facilitated a longstanding policy and practice of violation of civil and constitutional rights, particularly of Hispanics and blacks. These decisions involved the following: denial of motions to compel discovery, denial of motion for joinder of Petitioner Linda Ann Vega , denial of motion for certification of the action as a class action, granting qualified and absolute immunity to defendants, dismissal of RICO claims without discovery or a hearing, all of which were affirmed by the opinion of the Fifth Circuit Court of Appeals on August 30, 1994 for Consolidated Appeals 93-1808 et al.. Petitioners also request the Supreme Court to review the Fifth Circuit's holding in their opinion that instruction of his staff to prepare, execute, swear and notarize statements known to be false--suborning of perjury--by Justice of the Peace Blalack was harmless "coaching" of witnesses.

Petitioners' complaint arises from harm inflicted upon citizens by an alleged corrupt conspiracy among elected and appointed officials in Lubbock County in the State of Texas.

1. In 1986 Lubbock County Court ordered Blalack to provide jury trials. In Quintero v Blalack County Judge Mackey Hancock, on November 1, 1986, issued an injunction requiring Justice of the Peace L. J. Blalack to provide a jury trial in all civil cases on request and payment of jury fees. At this point, Lubbock County officials can be shown to have been put on notice about Blalack's practice of violation of the rights of citizens in his court.

2. In 1987, Orville Wilmington was arrested for failure to pay a $60 fine on the spot. On February 12, 1986, Orville Wilmington received a citation for failure to display a state inspection sticker on his windshield; he had just had his windshield replaced that morning. When he went to Blalack's court, he was fined $60; he had $58 in his pocket, which he offered in payment;

Blalack's clerk refused this partial payment and summoned the bailiff to take Wilmington to jail, where he remained in custody for four hours. Wilmington filed a complaint with the Texas Judicial Conduct Commission, which dismissed his complaint because he "had never been arrested" despite Wilmington's submission with his complaint to the Commission of copies of his arrest documents, along with a receipt from the Lubbock County jail for his personal effects including the $58 he had offered in payment of his fine.

3. Linda Ann Vega and her family were abused, excessively fined, and arrested. On January 3, 1990, Petitioner to Join Linda Ann Vega, Ernest Vega and Jennifer Vega were summoned to appear before L. J. Blalack on a Violation of Compulsory Attendance complaint filed by Colene Fielding, Attendance Officer for Lubbock Independent School District. They were not allowed to speak in their own defense; they were fined $352--the maximum fine for a single complaint on first offence was $25. When they informed Melissa Martin they were unable to pay this excessive fine on the spot, Ms Martin summoned the Bailiff to take Linda Vega into custody. Linda Ann Vega requested the assistance of several Lubbock County officials, all of whom refused; the bailiff, who knew Ms Vega, took the Vegas back into Blalack's court--where they were abused and held for more than five hours. After they were released, Blalack reduced the fine to $250; the case was dismissed upon subsequent appeal to County Court [Doc84:Pp628-677].

4. Gerard Hennessey was denied access to records, abused, and arrested. On April 9, 1991, Plaintiff Gerard Hennessey went to the office of former Lubbock County Precinct 1 Justice of the Peace Defendant L. J. Blalack's and requested records of former Justice of the Peace Bill Ross related to Suter v Hennessey in preparation for a mediation meeting the following week. Because Defendant David Nelson, attorney for Suter, had previously attempted to prevent Ross' staff from giving Plaintiff Hennessey access to records on other Suter cases, Plaintiff Hennessey carried a tape recorder in case Nelson again attempted to prevent access to the records.

Upon requesting access to the Suter case records, from Blalock's office staff Hennessey was loudly and publicly abused by Defendant Melissa Martin, who directed him to speak to Blalack in

court; this incident was recorded on tape, and a transcript subsequently verified by Texas Ranger Jim Mull was included with the Original Complaint. As Hennessey went into Blalack's court, Melissa Martin telephoned Bailiff Jay Helton to "come and arrest someone".

After Hennessey had been sitting in court waiting to ask Blalack for access to the Suter case records for more than 15 minutes, Blalack called Lubbock Avalanche Journal reporter Mike Erickson-- who was sitting next to Hennessey--to the bench, publicly abused and threatened him. When Melissa Martin indicated to Blalack that he had the wrong person, he let Erickson go. He then told Helton not to let Hennessey leave the court: at that point, Hennessey was deprived of his liberty. Blalack then called Hennessey to the bench, publicly abused him, did not allow him to speak, and ordered Helton to take him to jail. As Hennessey and Helton were leaving the court, Blalack called them back, and asked Hennessey to apologize. At that point, for the first time, Hennessey was allowed to speak; he explained he had done nothing. When Melissa Martin, who was still standing in the doorway to the court office, affirmed that Hennessey had not gone past the counter barrier in the office, he ordered Hennessey released and asked him what he wanted. At that point, in fear for his personal safety, Hennessey asked only for the settlement figure for Suter v Edwards. Blalack gave him an inaccurate figure--which Hennessey did not question--and then allowed Hennessey to go.

On the following day, attorney Sam Ogan accompanied by Hennessey went back to Blalack's office to request access to the Suter case files. Ogan was also refused access to the files and was told he could have copies of specific items in the files for $2 a page. Blalack told Ogan that Hennessey's arrest had been a misunderstanding with his staff, and that he had fixed it. Neither Hennessey nor Ogan was permitted access to the Suter case records until after Blalack was removed from office. The Suter case files contained documents that showed Nelson, Suter's attorney, had violated the Federal Fair Debt Collection Practices Act--a federal offense. A critical document, the original complaint for Suter v Edwards, to which Nelson's illegal collection letter was attached, is missing from the file.

Had the District Court allowed discovery, Petitioners would

have been able to submit to the Court evidence of a possible reason for the unprovoked extreme reaction by Melissa Martin and L. J. Blalack: J. David Nelson, his wife and his law partner, were the principal contributors to Blalack's 1988 election campaign fund.

5. Gerard Hennessey was denied assistance by Lubbock County's chief administrative officer Don McBeath, who was at the time receiving regular bonus payments from fines and fees produced by Blalack's court. Plaintiff Hennessey sought the assistance of Defendant Don McBeath in his official capacity as County Judge; McBeath apologized but refused to take any action to assist Plaintiff Hennessey. Lubbock County financial records show that in 1991 Defendant Don McBeath received $2,800 from the Lubbock County bonus fund [Doc98:Pp806-808] that was obtained from excessive fees and fines on "hot check" charges largely imposed and collected by Defendant Blalack. At that time, Defendant Blalack heard almost all Lubbock County "hot check" [Doc52:P380], all truancy [Doc52:P375; Doc84:Pp638-639] as well as other misdemeanor cases, with a practice of imposing excessive fines and fees [Doc52:P380; Doc52:P382]. Although Lubbock County officials were obviously aware of this, no action was taken by its chief administrative officer County Judge Don McBeath to assist citizens to obtain the quadruple fees due them from Blalack under Title 61 Article 3908 of the Texas Government Code:

Blalack's court was the only one Lubbock County authorized to pay overtime to its staff in 1991, totalling $19,107 [Doc 52:P380].

6. L. J. Blalack instructed Melissa Martin to have his staff prepare, execute, and swear false statements in order to prevent action by the Judicial Conduct Commission. After Plaintiff Hennessey left his courtroom on April 9, 1991, Defendant Blalack instructed Defendant Melissa Martin to obtain written statements from members of his staff who were present during the incident, including Julie Martin, Rose Marie Chivers, Lyn Duval, Diana Holloman, and Tami Pisarski. Blalack instructed them to falsely state that they would have given Plaintiff Hennessey the records he requested if they had been available, and that Plaintiff Hennessey had been loud and abusive in Blalack's office and court. Each of the above staff members, including Melissa Martin, prepared, executed, and swore these false statements to help Blalack respond to any complaint Hennessey might make to the Texas Judicial

Conduct Commission. The purpose of these acts of perjury and suborning of perjury was to facilitate an adjudication of direct contempt rather than constructive contempt, for which Blalack had not provided due process. These acts were carried out with the express intent of obstructing an official investigation of the State of Texas. Except for her own statement and that of Lyn Duval, Melissa Martin then notarized all the statements [Doc1: Pp34-47], knowing them to be false [Doc1:Pp58-71].

7. On the same day, Melissa Martin made a false statement and L. J. Blalack issued an arrest warrant and peace bond against Martin's neighbor R. B. Adamson. Also on April 9, 1991, Melissa Martin prepared and executed--and L. J. Blalack notarized--a statement about her neighbor R. B. Adamson in which she claimed without any evidence that she believed he had entered her home and stolen some women's shoes. Adamson had recently ordered a friend of Martin's to remove cattle that were grazing without permission on his property. Blalack issued a warrant for Adamson's arrest and required him to take out two peace bonds in a week. An old-age pensioner, Adamson was released from jail after midnight in cold weather with only a shirt with no way to get to his home in New Deal. After paying for the peace bonds and the attorney's fees, Adamson was unable to maintain payments on his property, which he then sold for a loss shortly afterward. He now has no home.

8. Without records from Ross' court, Gerard Hennessey agrees to reduced settlement in Suter case. During the mediation meeting re Suter v Hennessey on April 14, 1991, Plaintiff Hennessey was induced to settle for a much smaller amount ($500) [Doc16:Pp129-135] than he had claimed ($20,000) because he did not have the necessary records to show that Suter's attorney Defendant J. David Nelson had been acting as a debt collector, and had violated the Federal Fair Debt Collection Practices Act by sending an illegal collection letter [Doc1:P30]

9. In 1991 Gerard Hennessey, Linda Ann Vega, R. B. Adamson and 9 other Lubbock citizens filed complaints with Texas Judicial Conduct Commission, which dismissed their complaints without investigation. The first serious complaint about Defendant Blalack known to Plaintiffs was filed with the Judicial Conduct

Commission in 1987 by Orville Wilmington, which Robert Flowers dismissed on the grounds that Wilmington had not in fact been arrested--although Wilmington provided copies of all his arrest documents to the Commission [Doc98:Pp794-799]. During 1991 Petitioners Hennessey, Linda Ann Vega, R. B. Adamson and 9 other Lubbock citizens filed complaints against Blalack to the Texas Judicial Conduct Commission. Robert Flowers, Chief TJCC Executive Officer, stated in a tape recorded telephone conversation that so many complaints had been filed that one of his staff was called the "Blalack Division" [Doc142: Pp1058-1074]. Flowers visited Lubbock in September 1991 for one day to investigate the complaints; he interviewed Defendant McBeath, Criminal District Attorney Travis Ware, Attorney Sam Ogan and Justice of the Peace Jim Hansen, had lunch with Defendant Blalack and his attorney Bill Wischkaemper, and departed. Flowers never examined Blalack's court records, interviewed or contacted any other complainants except for one hasty telephone call. In active obstruction of the State of Texas Judicial Conduct Commission investigation, Blalack supplied Defendant Flowers with the false statements about the incident involving Plaintiff Hennessey that he had instructed his staff to prepare and swear in April 1991. In October 1991, Plaintiff Hennessey sent Defendant Flowers a transcript and copy of the tape recording of the April 9, 1991 incident. On December 20 Robert Flowers sent a letter to Blalack, giving him the names of the complainants despite assurances by the Commission that complaints would be held in confidence. On Robert Flowers' recommendation and lacking adequate information, the Commission dismissed all twelve complaints in December 1991 [Doc1:P79]; Blalack started his re-election campaign in January 1992.

10. Lubbock County Juvenile Chief Sunny Ratliff outlines correct truancy procedures to JPs. LISD officials met with Defendant Blalack in 1987 and, in knowing violation of Texas Education Act §4.25 which specifies that truancy cases must be heard in the court with jurisdiction of the parent's residence, agreed with Defendant Blalack to bring all truancy cases in his court regardless of the residence of the parents of the truant child [Doc8:Pp638-639]. In 1989 all school authorities were put on notice about jurisdiction when a revision to §4.25 came into effect, extending jurisdiction to the location of the truant child's school. - On October 16, 1991 Lubbock County Juvenile Chief Sunny Ratliff

issued a Memorandum to all Justices of the Peace, outlining the correct procedures for truancy cases [Doc84:Pp640-641]. In it, she made particular reference to jurisdiction, to specific defenses that must be allowed, to procedures necessary before a valid truancy complaint could be filed, and to the limits for fines.

11. Carlos Leal declared candidacy for Blalack's office on Friday, was served on Sunday with summonses to appear in two JP Courts for truancy and a "hot check" already paid; media were called to witness his arrest at the JP courts. On January 10, 1992, Carlos Leal Sr. declared his candidacy for the primary election to Defendant Blalack's office. On Sunday, January 12, he was served with a summons on an old paid-up "hot check" charge and truancy summonses by two Lubbock County Justices of the Peace. The truancy concerning Leal's son was filed late January 10 by Colene Fielding, having added the Leal case to those she had already submitted to Blalack's court more than a week previously. LISD officials took custody of Leal's son in his school classroom, and brought him to Blalack's court, where both Leal and his son were publicly abused and humiliated in front of the media who had been called for this purpose. Justice of the Peace Grady Brooke ordered Leal arrested for not appearing on the the "hot check" charge, although he had already paid the charges involved twice. Leal filed a Federal Civil Rights complaint against, among others, Defendants Blalack and Colene Fielding, the LISD truancy officer who filed the truancy charge on the same day that Leal declared himself a candidate for Blalack's office. Judge Sam Cummings was assigned as presiding judge, and administered the case until August 7, when he recused himself.

12. LISD changed truancy procedures, Trustee deLeon expressed concern about truancy abuses by Blalack. In January 1992 Plaintiff's wife and Petitioner to Join Vega brought irregularities about jurisdiction in LISD truancy cases and complaints about overfining, arrests and public abuse inflicted upon mainly Hispanic parents and children in Blalack's court to the attention of LISD Trustee Linda deLeon. As a result, LISD announced that, for the first time since 1987, truancy cases would be brought in the precinct of the residence of the parents or of the school. In announcing the changes, Trustee deLeon expressed concern about abuse of her constituents in Blalack's court

[Doc52:P375].

13. Lubbock County auditor announced evidence of overfining by Blalack; McBeath refused to act. On January 23, 1992 the Lubbock County Auditor announced he had examined a small portion of Blalack's records and had found many instances of overfining for a variety of cases including alcohol and traffic violations. Lubbock County Judge Don McBeath refused to take any action to assist citizens against whom the excessive fines were imposed, or to order a more comprehensive examination of the records [Doc52: P387] which, as holder of Blalack's $5,000 bond on behalf of Lubbock County, McBeath had an obligation to pursue under §27.001 of the Texas Local Government Code.

14. Judicial Conduct Commission was asked to reconsider complaints against Blalack. Also in January 1992 several complainants in addition to Gerard Hennessey and Linda Ann Vega requested Defendant Flowers to reconsider their complaints [Doc52:P376]; their requests were denied in April 1992, shortly before Blalack was defeated in the primary elections..

15. Hennessey and Vega filed Ex Rel Petition for removal of Blalack from office. On January 30, 1992, a month after their original complaints to the Judicial Conduct Commission were dismissed, Plaintiff Gerard Hennessey and Petitioner to Join Linda Ann Vega filed in the 364th Texas District Court their Ex Rel Petition for Immediate Suspension and Removal of L. J. Blalack from office on grounds of his Official Misconduct and Official Oppression. The presiding judge, who recused himself, was replaced by Judge Quay Parker.

16. Neal and Greathouse, special prosecutor and investigator, refuse to proceed with investigation of Ex Rel case. Judge Quay Parker appointed John Neal as Special Prosecutor after Lubbock Criminal District Attorney Travis Ware recused himself; Neal, who executed his oath as special prosecutor on February 25, 1992 [Doc107:P859], employed Doug Greathouse as his investigator. On March 24 and 25, 1992, after delay Neal claimed was caused by Defendant McBeath's original refusal to reimburse their expenses, Neal and Greathouse came to Lubbock to investigate the case. They took statements from Gerard Hennessey and Linda

Ann Vega, Bailiffs Jay Helton and Arthur Hetler, and Avalanche Journal reporter Mike Erickson. They contacted Ware and interviewed J. Blalack, who thereby intentionally obstructed another official State of Texas investigation by providing them with copies of the false statements Blalack's staff had prepared and sworn on his instructions about the April 9, 1991 incident with Gerard Hennessey. These statements were made by Melissa Martin, Julie Martin, Tami Pisarski, Rosemarie Chivers, Diana Holloman, and Lyn Duval. Relying in part on these statements and failing to examine Blalack's court records, in May 1992 Defendants Neal and Greathouse met with Hennessey and Vega to inform them that the case would not be prosecuted further for lack of evidence of wrongdoing by Blalack.

They refused to inspect Blalack's records, to interview other injured parties, and to contact the Judicial Conduct Commission about other complaints against Blalack. Both Hennessey and Vega [Doc107:P860-3] wrote to Neal, protesting his refusal to proceed with the investigation on their behalf. Had Neal or Greathouse spent only one hour examining Blalack's court records, they could not have missed the extensive evidence of Blalack's official misconduct and violation of civil rights that both Blalack's successor Tom Head and Mark Welbourn quickly and easily found in 1993.

On July 24, 1992, Defendants Neal and Greathouse provided Plaintiffs Hennessey and Vega with copies of the affidavits they had obtained from Jay Helton, Arthur Hetler, Mike Erickson, along with the statements made by Melissa Martin, Julie Martin, Tami Pisarski, Rose Marie Chivers, Diana Holloman, Lyn Duval about the April 9, 1991 incident, as well as a copy of Melissa Martin's false sworn statement of July 1992, notarized by Patsy Summers, [Doc1:P48].

14. Gerard Hennessey's wife and Linda Ann Vega met with LISD trustee Linda deLeon and superintendent Mike Moses about truancy abuses. In August 1992 Petitioner to Join Linda Ann Vega, accompanied by Plaintiff Henne ey' wife, met with LI D Superintendent Mike Moses and School Board Trustee Linda deLeon about Defendant Blalack's abuse of parents and children brought into his court as a result of LISD truancy complaints. Dr. Hennessey indicated to Dr. Moses that as a teacher, Colene Fielding has an obligation to protect children from the abuses she had witnessed in Blalack's court on a regular basis.

15. Hennessey contacted Flowers and Neal again about Blalack's misconduct; Blalack was forced to resign. In August 1992, Gerard Hennessey again wrote to Defendant Flowers as well as to Defendant Neal, providing more evidence of Blalack's misconduct--this time, personal use of County stationery and postage [Doc52:P388]. In September 1992, after contact from Robert Flowers, Blalack resigned from the bench [Doc52:P379]. In October Flowers advised Hennessey and Vega that their complaints had again been dismissed by the Commission because Blalack had resigned from office [Doc1:P85].

16. Blalack and Melissa Martin indicted by Grand Jury for perjury, official oppression, and official misconduct. In August 1992, District Attorney Travis Ware announced that L. J. Blalack's personal use of government property, the subject of several local newspaper articles, would be investigated. In December 1992 Special Prosecutor Terry McEachern presented evidence regarding this matter and testimony by Hennessey and Vega to the Lubbock County Grand Jury. In an effort to obstruct a third official investigation by the State of Texas, Blalack testified to the Lubbock County Grand Jury on December 6, 1992, that the statements made by Blalack's staff on April 9, 1991 were true. The jury was held over; its members testified to the next Grand Jury on January 8, 1992, when Defendant Blalack was indicted for official oppression of Hennessey and Vega, for aggravated perjury to the December grand jury, and for official misconduct regarding personal use of government property [Doc1: Pp43-46]. In addition, Melissa Martin was indicted for perjury for her original statement made on April 9, 1991 about Hennessey [Doc1:P42]. As of December 16, 1994, none of the charges against Blalack have been heard by any Lubbock County Court.

17. At the same time Linda Ann Vega was testifying to the Grand Jury, her daughter--an epileptic--was given severe corporal punishment by an LISD school principal. Also on January 8, 1993, at exactly the time when Petitioner to Join Linda Ann Vega was testifying to the Grand Jury about Defendant Blalack's misconduct, her daughter Stefanie--an epileptic--was severely paddled by Principal Booe, ostensibly for an infraction committed in the middle of December 1992. Petitioner Vega had received

extensive media coverage during the entire week; over the previous year, she had repeatedly and clearly stated the nature of her complaint against Blalack and Colene Fielding in television interviews.

18. Gerard Hennessey filed Federal Civil Rights conspiracy complaint under RICO. On April 7, 1993--more than three months after the indictment of Blalack by the Lubbock County Grand Jury, and almost two years after the abuse, incident when Blalack still had not been arrested or arraigned by Lubbock County officials, Plaintiff Hennessey filed the current Complaint against Defendant Blalack et al. on grounds of civil rights violations, conspiracy and RICO violations. Because Linda Ann Vega did not believe her daughter would be safe attending an LISD school if she proceeded with action against Blalack and LISD, she did not file as an original co-Plaintiff in the Action. She considered not only the excessively bruising and dangerous--in view of Stefanie's epilepsy--corporal punishment inflicted upon Stefanie by Principal Booe, but also the taking into custody of Carlos Leal's son by LISD officials without Leal's knowledge or consent. Hennessey made reference to her case in the Original Complaint [Doc1:Pp4-5; Doc1:Pp26-7; Doc81:Pp87-91,93].

19. Welbourn examined Blalack's records and reported evidence of excessive fines, false imprisonment and other long-term abuses on a extensive scale over at least four years. By July 1993, Mark Welbourn, whom Hennessey had employed to examine Blalack's court records, reported that at least 500 other Lubbock citizens had been overfined, arrested for failure to pay excessive truancy fines on the day, and otherwise abused by Blalack. Welbourn found that most of the truancy actions were filed against Hispanic families[T269].

20. Criminal actions against Blalack and Melissa Martin are pending after more than 24 months. State of Texas prosecution of L. J. Blalack for felony perjury to the Lubbock County grand jury on December 7, 1992, regarding the false statements about Gerard Hennessey that he had instructed his staff to prepare in April 1991 [Doc1:Pp42-7], as well as misdemeanor charges for official

misconduct with regard to personal use of government property, and official oppression of Gerard Hennessey and Linda Ann Vega, is in progress; no hearing date has yet been set. Two assault charges against Melissa Martin from 1989 have never been presented in Lubbock County courts.

V. HOW THE ISSUES WERE RAISED BELOW

Petitioners' complaint filed in the Northern District of Texas Lubbock District Court on April 7, 1993 as 5:93-CV-078-78-C [Document 1: Pages 1-101] arises from an alleged longstanding corrupt conspiracy among elected and appointed officials in Lubbock County in the State of Texas. Petitioners claim that L. J. Blalack, Justice of the Peace for Lubbock County Precinct 1, operated as kingpin and central state actor of the conspiracy, and that over a period of at least six years, Blalack systematically extorted excessive fines and fees from Lubbock citizens, abused them, threatened and imprisoned them for inability to pay these fines and fees on the same day; a major source of extortionate revenue was excessive (up to $18,000)[T268] fines and fees imposed on uneducated unrepresented poor minority citizens who came before Blalack under Texas Education Code §4.25: Violation of Compulsory Attendance (truancy), for issuance of "bad checks", for traffic violations and for other Class C Misdemeanors such as Minor in Possession of Alcohol, and Failure to Display Automobile Inspection Certificate. None of these offenses is a jailable offense; all decisions of a Texas Justice of the Peace are immediately appealable to the County Court.

Petitioners also alleged that Blalack, his staff, and other Lubbock County officials protected the conspiracy by denying citizens, attorneys and members of the press access to court records, and by a practice of preparing, executing, swearing and notarizing false statements concocted to justify unlawful conduct and violation of civil rights. They submitted evidence to show that Lubbock County employees helped to collect these extorted funds, placed them in County accounts, and received personal bonuses and overtime payments from these accounts. They provided documents showing that numerous attempts by Lubbock citizens, attorneys, other judges, and members of the press over at least six years to

bring Blalack's corrupt violation of civil and constitutional rights under control were met with flat refusals to investigate and dismissals of legitimate complaints without investigation by state officials Special Prosecutor John Neal, his Investigator Doug Greathouse, and particularly by Texas Judicial Conduct Commission Chief Executive Officer Robert Flowers who had received, refused to investigate, and dismissed at least two dozen serious complaints about L. J. Blalack's conduct in the years 1986 to 1992.

1. Indictment of L. J. Blalack and Melissa Martin. On January 8, 1993, the Lubbock County Grand Jury indicted Defendant Blalack on two counts of official oppression (one count on the public abuse and unlawful arrest of Gerard Hennessey on April 9, 1991 and one count on the public abuse and unlawful arrest of Linda Ann Vega and her family on January 3, 1990), one count of perjury (based on Blalack's sworn testimony to the December 1992 Grand Jury claiming that Plaintiff Hennessey's conduct had merited arrest for contempt during the April 9, 1991 incident involving abuse and arrest of Plaintiff Hennessey--who had come to his court to obtain another judge's records), and one count of official misconduct (for personal use of government property). The Grand Jury also indicted Defendant Melissa Martin on one count of perjury (for preparing and swearing a false statement about the April 9, 1991 incident and for notarizing other statements she knew to be false) [Doc1:Pp93-97]. By the first week in April 1993, Blalack had neither been arrested nor arraigned by Lubbock County officials.

2. Original Federal Civil Rights complaint and service. On April 7, 1993, Plaintiff Gerard Hennessey filed his Original Complaint against Defendant L. J. Blalack and others, claiming damages under 42§1981-3 for tortious public humiliation by a public employee, false imprisonment, denial of access to public records, denial of due process, denial of equal protection under the law; he demanded costs and treble damages under RICO on grounds of a corrupt conspiracy to violate civil rights of Plaintiff and others. The action was filed against L. J. Blalack, J. David Nelson, John Neal, Doug Greathouse, Robert Flowers, Melissa Martin, Julie Martin, Patsy Summers, Rose Marie Chivers, Lyn Duval, and Diana Holloman [Doc1:Pp1-101].

3. Responses to the Complaint. The chronology and nature of responses to the Original Complaint are listed in the Appendix.

4. Settlement Conference. On August 12, 1993, the Court issued its Scheduling Order [Doc75:Pp514-5] requiring parties to meet to discuss settlement of the Action, in response to which Plaintiff Gerard Hennessey accompanied by his wife, met with Defendant Blalack accompanied by his wife, and Defendants' Counsel Ratliff, Thompson and Gresham, Gorsuch, Jones, Thompson, Joanne Bernal; excluded by objection of parties were Stanley Kaster, Linda Ann Vega, Mark Welbourn, and Ratliff's law clerk. Contrary to specific instructions in the Court's order, no Defendants other than Blalack attended this meeting. Plaintiff included this informaton in his Report on the Conference filed August 25, 1993 [Doc91:P766-7]; the Court took no action on this failure to follow its orders.

5. Application for Certification of Action as a Class Action. Plaintiff obtained a copy of an LISD memorandum stating that in 1987 L. J. Blalack had met with LISD officials and agreed with them to hear all Lubbock truancy cases [Doc84:Pp638-9] in knowing violation of jurisdiction based on parent's residence requirement stipulated in Texas Education Statute §4.25 [Doc52: P373]. From a report from Mark Welbourn [Doc84:Pp642-677], who was employed by Plaintiff to examine Defendant Blalack's records, Plaintiff Hennessey became aware of the longstanding and pervasive nature of Defendant Blalack's misconduct and violation of U.S. and Texas Constitutional protections against lack of jurisdiction and excessive fines, as well as the extent of the financial interests of Lubbock County and Lubbock Independent School District officials in LISD truancy cases.

Because many of the persons injured in the process of these truancy cases had been subjected to the same abuses inflicted upon Plaintiff Hennessey (unlawful arrest, public abuse and denial of due process), and because the total amount of money involved in excessive fines and fees was obviously very large--possibly in excess of $1 million over five years--Plaintiff filed a Motion for Certification of the Action as a Class Action [Doc50:Pp353-360;

Doc51:Pp361-370; Doc52:Pp371-394]. Mindful that the risk to the interests of other injured parties from res judicata could be increased by Plaintiffs' lack of legal expertise to pursue their interests adequately, Plaintiff Hennessey and Petitioner to Join Vega obtained an agreement from attorney Val Varley to represent them provided a 60-day continuance could be obtained. On July 26, Defendant Melissa Martin filed her Response in Opposition to Certification as a Class Action [Doc59:Pp427-434]; on July 27, Defendant L. J. Blalack filed his response [Doc62:Pp441-463]. On August 12, Class Action Certification was denied [Doc73:P512]. On August 19, Plaintiff and Petitioner to Join Linda Ann Vega re-filed their Motion for Certification [Doc83:P616] which the Court denied on September 12 or 13 (filing dates differ on Plaintiff's copy and the official court copy) with instructions not to file another application for class action certification [Doc114: Pp883-4].

6. Motion of Linda Ann Vega for Joinder. Meanwhile, on August 13, 1993, two days after her daughter Stefanie's marriage, Linda Ann Vega filed her Motion to Join herself to the Action as co-Plaintiff and LISD truancy officer Colene Fielding as co-Defendant [Doc77:Pp517-525; Doc78:Pp526]. She filed medical reports and other evidence that Stefanie--an epileptic--had been severely paddled by her school principal at exactly the time Linda Vega was testifying against Defendants Blalack and Colene Fielding and about LISD truancy cases to the Grand Jury [Doc82:P574-5], to explain why she had not been an original co-plaintiff in the Action. On September 13, the Court denied her Motion for Joinder [Doc112:Pp880-2].

7. Discovery.

a. L. J. Blalack. On June 16, 1993, Defendant L. J. Blalack served his First set of Interrogatories and Requests for Documents on Plaintiff Gerard Hennessey [Doc105:Pp830-846], to which Plaintiff responded in part with regard to matters that covered the pending issue of certification of the action as a class action--as directed in Local Rule 10(c)--and on August 30 and applied for a protective order on September 13 [Doc90:Pp779] on his work product and for items that were available in Blalack's own court records and in Lubbock County records; Plaintiff objected to having to provide these items to Defendant due to the expense and burden

involved, particularly as Defendant Blalack had previously denied Plaintiff access to court records of Bill Ross [Doc1:Pp31-32]. On October 21, the District Court filed an Order Compelling Plaintiff to Comply with Blalack's discovery requests [Doc164:P1286], which Plaintiff did within 10 days.

On July 27, 1993, Plaintiff Hennessey served his First Set of Requests for Production and First Set of Interrogatories on Defendant Blalack [Doc156:Pp1181-1208]. On August 24, 1993, Defendant Blalack filed his Objections to discovery and applied for a Protective Order [Doc90:Pp756-765]. On October 12 Plaintiff filed his Motion for Admission as True all unanswered Requests for Admission and Motion to Compel Discovery [Doc156:Pp1171-1229], which was denied on November 2 [Doc177:P1342]. On March 22, 1994, Petitioners' complaint against L. J. Blalack was dismissed by granting his Motion for Summary Judgment [Doc158,Doc224].

b. Robert Flowers. On July 16, 1993, Plaintiff Hennessey served Defendant Flowers with a Request for Production of Documents and First Set of Interrogatories [Doc80:Pp544-555] to which Flowers objected on the grounds of qualified good faith immunity, and applied to the Court for a protective order [Doc80:Pp538-542], to which Plaintiff objected on September 1 [Doc98:P789]. On September 17th the Court dismissed the complaint against Robert Flowers [Doc125:P956] and on the same day the Court ruled his motion for protective order moot [Doc 126:P958].

c. Patsy Summers, Julie Martin, John Neal, Doug Greathouse, Rose Marie Chivers, Don McBeath and Lubbock County. On August 16, 1993, Plaintiff served the First Set of Requests for Production and First set of Interrogatories upon Defendants John Neal and Doug Greathouse [Doc85:Pp686-715] and upon Defendant Don McBeath [Doc86:716-731]. On August 20 the above defendants filed their Motion for Protection and Motion to Stay Discovery [Doc85:P678-680; Doc86:Pp681-685]. On August 25, the Court granted the Motion to Dismiss for Julie Martin and Patsy Summers [Doc93:Pp770-772], severing the complaint to 5:93-CV-221-C [Doc94:P773] and was appealed by Plaintiff on September 7 [Doc99: P800]. On September 17

discovery was ruled moot [Doc113:P881]. On August 26, the Court granted the Motion to Dismiss for Don McBeath and Lubbock County [Doc95:Pp774-5]; on September 17 discovery was ruled moot [Doc113:P881-2]. On August 30, the Court granted the Motion to Dismiss for John Neal and Doug Greathouse [Doc96:Pp777-778] and severed into 5:93-CV-226-C [Doc96:P779] on which final judgment was given.

Defendants John Neal, Doug Greathouse, Julie Martin and Patsy Summers have never filed an Answer to the Original Complaint, nor have anyone but John Neal among them submitted an affidavit to refute the complaints against them. The District Court denied all discovery requests. It also dismissed complaints against all parties, with the exception of Don McBeath and Lubbock County. This effectively prevented Petitioners from proceeding with the action on the basis of conspiracy, because all of the co-conspirators have been dismissed from the case without discovery or presentation of evidence to a trier of fact. On February 21, 1994, the District Court repealed its Local Rule 10(c) requiring discovery in class actions to proceed only as to class action issues preventing discovery on the merits until certification. Because this materially affected the outcome of this case Petitioners requested the Court to direct the District Court to vacate its orders denying discovery and to direct Defendants to participate in discovery on the merits, which the Court denied.

8. Jury awarded $10,000 against McBeath and Lubbock County; their inaction was proximate cause of violation of Petitioner Hennessey's rights.

During the May 9-12 trial, Petitioner Hennessey relied greatly on newspaper clippings, the only form of documentary evidence available to him in most cases due to denial of discovery. Both Justice of the Peace Jim Hansen and Constable Gary Newburn testified that their computer access to Blalack's public court records had been blocked on orders of County Judge Don McBeath.

9. District Court reversed jury verdict without comment. On June 13, 1994, the District Court granted Defendants Don McBeath and Lubbock County's Motion for Judgment as a Matter of Law without comment, awarding them court costs and subsequently denying their application for attorney's fees.

VI REASONS FOR GRANTING THE WRIT

As shown below, the Fifth Circuit Court of Appeals' decision of August 30, 1994, is in conflict with decisions of the Supreme Court, of other Federal Courts of Appeal, of state courts of last resort, and with its own decisions. Petitioners respectfully request the Supreme Court to review the decision.

A. A corrupt civil rights conspiracy

Title 42 §1983 was specifically drafted to provide a basis for compensation of persons for harm caused by deprivation of constitutional rights by persons acting under the color of state laws Carey v Piphus 98 S.Ct. 1042-7; thus there can be no protection for public officials who knowingly, wantonly, and maliciously carry out illegal acts that harm the citizens they have been appointed to serve. Nor is there protection from RICO for public officials whose participation in a conspiracy to deny civil rights is prohibited, such as in U.S.C.A. 18 §241 This includes an official's failure or refusal to act which facilitates, protects, or otherwise furthers the interests of the conspiracy. In U.S. v Garcia 655 F2d 59, U.S. v Cole 704 F2d 554, among a series of similar cases, the courts have consistently held that participation in a conspiracy's common purpose and plan may be inferred from the defendant's actions and reactions to circumstances. Prima facie evidence of existence of a conspiracy and failure to act on the part of a public official places the burden of proof upon him to show that he was not a member of the conspiracy. A New York Southern District Court found in U.S. v Pacciolo 753 Supp 449 (1990) the fact that a defendant allegedly played a lesser role in a conspiracy did not warrant severance.

A co-conspirator is liable for harm done by a conspiracy if found to have carried out at least ONE participatory act in support of the corrupt conspiracy U.S. v Hobson 686 F2d 628. Massey v Farnsworth Civ. App. 353 SW 2d. 262,271 (1961) cited 15A CJS 653 §17: "Conspirators are jointly and severally liable for all damage resulting from the conspiracy, each being responsible for the acts of the other in furthering the common design." Intentional efforts to obstruct an official State of Texas investigation are

prohibited in Texas Penal Code Title 18 §1510. In U.S. v Hubbard 474 F.Supp.64 (1979) perjury charges were found to be relevant to conspiracy to avoid detection. Another instance of possible perjury by Melissa Martin was described by Federal 5th Circuit District Judge Mary Lou Robinson in her Opinion dated March 4, 1993 in re Farmer, Hubbard, and Kelly v. Sherrod, Ware, et al styled as 2:93-CV-0017-J.

B. Dismissal of class action without discovery or hearing.

Although the District Court has the discretion to determine whether a party is the proper representative of a class, this is subject to review Brittains v. General Telephone Co. 533 SW2d 886 (1976). In California Employment Development Department v Superior Court 178 Cal Rptr 612 (1981), the California Supreme Court affirmed that determination of the merits of an action may precede certification of a class. In 1994 the Supreme Court's decision removed the requirement for an economic motive--although one certainly exists in this case--in NOW v Scheidler. The maintenance of a class action will not be precluded by a vague description of the class in the complaint, where the complaint, read as a whole, adequately defines the class; see 6A Fed Proc, LEd, §12:63-65.

In County of Riverside v McLaughlin (US) 111 SCt 1661 (1990), 114 LEd 2d49, the Supreme Court found that a §1983 class action for failure to issue timely warrants for arrest was appropriate and that public officials can be held liable for damages they inflict upon citizens in violation of their civil and constitutional rights: "the County is not immune from systemic challenges such as this class action." The Supreme Court, in the Riverside ruling, even stipulates that in the case in which the original class representative's claim is terminated, "Termination of the class representative's claim does not moot the claims of unnamed members of the class. The County is not immune from systemic challenges, such as this class action." Joinder of Linda Ann Vega to this action is not only appropriate but would also avoid the problems associated with a headless class action described by R. P. Schneider in "Goodman v Schlesinger and the Headless Class Action", Boston University Law Review, Vol 60: Pp367.

The Supreme Court held in Buckley v Fitzsimmons 61 LW

4713 (1993) that prosecutorial immunity does not extend to investigative activity. Texas Judicial Conduct Commission Executive Officer Robert Flowers should be required to participate in discovery and dismissal of the complaint against him should be vacated. Flowers' flat refusals to investigate serious complaints against Blalack may be explained by Norma Kilgore's testimony in the May 9-12 trial [T101-2]: she stated that State Senator John Montford had sent a message to his old colleague Blalack that he would "fix it with the Commission".

An affirmed Texas decision held that 184 class members was sufficient to certify a class action in the Texas case Southwest Water Services Inc. v Cope 531 SW2d 873 (1975) ref. nre. In County of Riverside v McLaughlin (U.S.) 111 S Ct 1661, 114 LEd 2d. 49 (1990), the Supreme Court held that although the claims of the named plaintiffs in a class action under 42 USCS §1983 against a county's alleged failure to issue warrants for arrest were no longer immediate, their merits of controversy could be preserved for review by means of class action certification.

C. Refusal to disqualify presiding judge.

Disqualification of a judge from an action in which he or a person within the third degree of relationship has an interest is not optional, but required by Federal statute as well as established authority in the Fifth Circuit and the Supreme Court.

From May 1992 until February 1994, presiding Judge Sam Cummings' brother James Cummings served on the Board of Trustees of Lubbock Independent School District. Title 28, USC §455(a) and (b)(5)(i) stipulates that a judge shall disqualify himself whenever a person within the third degree of relationship has an interest in the outcome of the action. In Aetna Insurance Co. v Lavoie 475 U.S. 813, 106 S.Ct. 1580 (1986) the Supreme Court even held it improper for a judge to participate in a case that presented the same legal issue as a case in which the judge was a party. In Liljeberg v Health Services Acquisition Corp. 486 U.S. 847, 108 S. Ct. 2194 (1988) the Supreme Court upheld a Fifth Circuit decision reversing an essential use expropriation ruling made in favor of a hospital on whose board the judge served. The Court held that the judge had acted improperly and should have

disqualified himself. Petitioners claim this principle applies equally to those within the judge's third degree of relationship as to the judge himself (§455(b)5(i)), making his disqualification mandatory.

D. Denial of discovery and dismissal of complaints against co-conspirators.

In United States v. Kenny 645 F.2d 1323 (1981) the Supreme Court upheld the Ninth Circuit's finding that "once prima facie evidence of a conspiracy is provided to the Court, evidence of only slight connection is necessary to convict a particular defendant of knowing participation in it." Melissa Martin's sworn statements [Doc161:Pp1271-1273; Doc180: Pp1358-1360] exhibit the type of "insincere" statement that the Court held to be a hallmark of conspiracy. Her criminal trial for perjury in this specific case [Doc1:Pp96] resulted in a plea of nolo contendere.

In Cumins Insurance Society Inc. v South Coast Bank 610 FSupp 193 (1985), the Indiana District Court held that a copy of an FBI investigative file was not privileged where the investigation was already closed. Thus discovery should have been compelled upon Robert Flowers, who was carrying out investigative duties associated with his role as a prosecutor for the State of Texas when he refused to investigate complaints against L. J. Blalack, thereby facilitating the alleged corrupt conspiracy.

In Sheuer v Rhodes 416 U.S. 232 (1974), the Supreme Court held that "1. The Eleventh Amendment does not in some circumstances bar an action for damages against a state official charged with depriving a person of a federal right under color of state law, and the District Court acted prematurely and hence erroneously in dismissing the complaints as it did without affording petitioners any opportunity by subsequent proof to establish their claims. 2. The immunity of officers of the executive branch of a state government for their acts is not absolute but qualified..." The complaints alleged that the defendants acted either outside the scope of office, or in an arbitrary manner, grossly abusing the lawful powers of office.

"The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the

claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test. Moreover, it is well established that, in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader." The Supreme Court here relies on its ruling in Conley v Gibson 355 U.S.41,45-46 (1957).

Neither motions for dismissal of complaints against Defendants nor for summary judgments in their favor can be granted until they have participated in discovery, a principle clearly established in Poller v Columbia Broadcasting System Inc. 368 U.S. 464, 82 S.Ct. 486 (1962). In National Organization for Women, Inc. v Scheidler (1994), the Supreme Court held that in an action involving RICO claims, discovery must precede dismissal of complaints against alleged conspirators. The Court also held that "Nothing more than the complaint's extortion and injury allegations are needed to confer standing at this (pleading) stage", and that RICO does not require proof that either the racketeering enterprise or the predicate acts of racketeering were motivated by an economic purpose; "it need only be an association in fact that engages in a pattern of racketeering."

In Martin v. D. C. Metropolitan Police Department 812 F.2d 1425 (D.C. 1987) the District of Columbia Court of Appeals held that "summary judgment on the issue of qualified immunity was inappropriate until plaintiff was given opportunity to submit particularized interrogation to officers to ascertain whether there was any evidence to support plaintiff's assertions. In Morrison v Lipscomb 877 F.2d 464, the Sixth Circuit found that a judge who imposed a moratorium on execution of a judgment was not immune from liability for damages because this was an administrative, not a judicial act.

In Scheuer v. Rhodes 416 U.S. 235 (1973) the Supreme Court also held that a §1983 complaint against public officials that alleges they "intentionally, recklesly, willfully and wantonly" caused harm to citizens is entitled to continue proceedings, at least until the evidence has been gathered and submitted to the Court. Some Lubbock County employees claim that only by testifying under

subpoena will they be protected under Title 18§1513 from retaliation by Defendants and others; they cite Federal District Judge Mary Lou Robinson's opinion in Farmer v Ware, which found clear evidence of retaliation by Lubbock City and County officials against employees who testified against Lubbock County pathologist Ralph Erdmann and other County officials corroborated by testimony given in the May 9-12 trial. [T100, T149-61, T316-39].

E. Documents and due process are needed for arrest for constructive contempt; perjured statements of Blalack's staff show direct contempt was only excuse.

In Ex parte Cadena (App. 13 Dist. 1991) 811 S.W.2d 725 a Texas appeal court found that a person may not be imprisoned for contempt without both written order of contempt and written order of commitment; arrest without written commitment made for purpose of enforcing contempt judgment is illegal restraint from which prisoner is entitled to relief. As the necessary documents to justify arrest of Petitioners Hennessey and Vega do not exist, Blalack is liable to them for §1983 damages for false arrest.

F. Immunity cannot be granted for non-judicial acts, taken in bad faith; even with immunity, discovery can be mandated.

In Buckley v Fitzsimmons (1993), the Supreme Court held that prosecutors are not immune from civil liability for acts they perform that are not directly associated with judicial functions, in particular the investigation phase of a prosecution.

The District Court itself found this was not the case, "In fact (Gerard Hennessey) did not appear before Justice of the Peace Blalack as a party to a case in his court." Furthermore, Blalack's suborning of perjury by his staff later that day was clearly not a judicial act, but was rather to facilitate adjudication of Petitioner Hennessey's guilt for direct contempt--which the Fifth Circuit's opinion indicates is an actionable civil rights violation. The 7th Circuit found in Harris v Harvey 605 F2d 330 (1979) that a judge was not entitled to judicial immunity under the Civil Rights Act for defamatory acts allegedly perpetrated outside his courtroom and not part of his judicial function, and that he was nevertheless acting under color of state law when he carried out injurious defamatory

acts that thus made him liable for damages under §1983. The 7th Circuit also found that "the doctrine of judicial immunity does not require the exclusion of judicial acts from evidence, but merely protects a judge from liability for those acts." Thus discovery can and should be compelled.

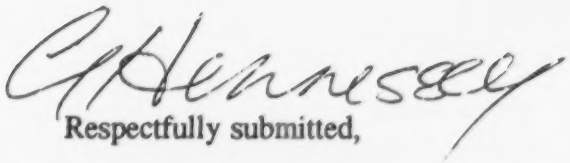
G. The harm done to Petitioners: real and recoverable.

In their 1979 decision in Montgomery Ward & Co. Inc. v Bureau of Labor 600P2d452, 42 OrApp 159, the Oregon Court of Appeals found that damages for humiliation and mental suffering are damages for actual harm, as in Pennsylvania Human Rights Commission v Zamantakis 387A2d70, 478Pa454. In Bryant v McGinnis 463 FSupp 373, non-punitive damages were granted for deprivation of intangible rights for which no pecuniary loss was shown. In Carter v Duncan 727 F2d 1225-6, 234 U.S. App.D.C.126. the Federal Appeals Court also found that humiliation is a cognizable and compensable injury under civil rights statutes.

Petitioners request the Supreme Court to review the Fifth Circuit's holding that Blalack's suborning of perjury by his staff to justify false arrest of Petitioner Hennessey was harmless "coaching".

VII. CONCLUSION

Petitioners respectfully request the Supreme Court to certify for review the opinion of the Fifth Circuit Court of Appeals, on the grounds that conflict with opinions issued by this Court, by other Courts of Appeal, by state courts of last resort, and by themselves warrants review and possible reversal. This is particularly important in view of the excessive and extensive nature of the civil rights abuses complained of by Petitioners.



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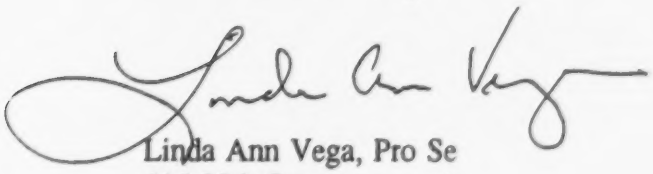

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